THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 17640 of 2002

O r d e r:

The petitioner was appointed as Conductor in the 2nd respondent-APSRTC in the year 1977. On 05.05.1990, while he was conducting the bus from Guntur to Bodhan, a check was exercised by the checking officials, and subsequently he was issued a charge sheet alleging certain cash and ticket irregularities. He submitted his explanation denying the charges leveled against him. Dis-satisfied with the explanation, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the enquiry report, a notice dated 10.01.1991, was issued to the petitioner to show cause as to why he shall not be removed from service. The petitioner submitted his explanation thereto. Upon consideration of the same, the 2nd respondent-Depot Manager, passed an order dated 28.02.1991 removing the petitioner from service. Assailing the said order, the petitioner preferred appeal and review before the appellate and review authorities, which were rejected. Thereafter, he raised an industrial dispute in I.D. No. 7 of 1998, and the Labour Court, vide award dated 21.04.2001, set aside the order of removal, passed by the 2nd respondent, as confirmed by the appellate and review authorities, and directed the 2nd respondent-Corporation to reinstate the petitioner into service with continuity of service but without back wages and by treating the period of suspension as not on duty. Questioning the said award insofar as not granting back wages and treating the period of

suspension as not on duty, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the Labour Court, having held that charge Nos.1 to 4 are not proved against the petitioner, and having set aside the order of removal, passed by the disciplinary authority, and having ordered his reinstatement into service, ought to have granted the consequential reliefs that ensue upon reinstatement, and non-granting of the same, is illegal and arbitrary, and more so when the petitioner was not gainfully employed during the period he was out of service and reinstated into service.

The learned Standing Counsel for the 2nd respondent-APSRTC, however, supported the impugned order. He submitted that though the disciplinary authority passed order of removal, which was confirmed in appeal and review, yet the Labour Court, after appreciating the entire evidence and material on record, having found that charge No.5 is proved and charge Nos.1 to 4 are not proved against the petitioner, felt that the punishment of removal is shockingly disproportionate to the proved misconduct, and took a lenient view and ordered reinstatement of the petitioner into service with continuity of service but without back wages and by treating the suspension period as not on duty, and the same cannot be said to be an illegal or arbitrary award, warranting interference therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in

flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The petitioner was charge sheeted alleging that he having collected requisite fare from twelve passengers issued un-connected and used tickets, and failed to close the tray numbers of all denominations in the SR at the time of check. In the enquiry, the charges leveled against the petitioner stood proved. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, which in appeal and review was confirmed.

Since the petitioner alleged irregularities in the conduct of the domestic enquiry, and having regard to the fact that the 2nd respondent-APSRTC failed to produce the documents pertaining to domestic enquiry on the ground that they were thieved, both the parties were allowed to adduce evidence before the Labour Court. Accordingly, on behalf of the 2nd respondent-APSRTC MW.1 was examined and Exs.M1 to M3 were marked. The petitioner himself was examined as WM.1 and Exs.W1 to W6 were marked. The Labour Court, after appreciating the said evidence and material placed on record, though found that the

2nd respondent-APSRTC failed to prove charge Nos.1 to 4 against the petitioner, in view of the admission made by the petitioner that he did not close the SR against stage No.15, it held that charge No.5 is proved. Having held so, the Labour Court, however, felt that the punishment awarded by the disciplinary authority is excessive and

disproportionate to the proved misconduct, and accordingly set aside the order of removal, and by taking a lenient view directed his reinstatement into service with continuity of service but without backwages and by treating the suspension period as not on duty. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner, as confirmed in appeal and review, was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. Though charge Nos. 1 to 4 held not proved, the fact remains that charge No.5 was held proved against the petitioner. The Labour Court, considering the nature of the proved charge, while setting aside the order of removal passed by the disciplinary authority as confirmed by the appellate and review authorities, felt that the punishment imposed was disproportionate to the proved charge, and accordingly, ordered reinstatement of the petitioner into service without backwages and by treating the period of suspension of the petitioner as not on duty, as a measure of punishment for the proved charge.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct

of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of her removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 30th November, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63